IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

SA.No. 684 of 1994(F)

AS.149/1993 of PRL.S.C.,THALASSERY
OS.44/1991 of MUNSIFF COURT, THALASSERY
.....

APPELLANT/APPELLANT/PLAINTIFF:

VELANDY ARAMBALIL DHANANJAYAN, S/O.ACHUTHAN,
78 YEARS, PENSIONER, ERAMALLY HOUSE, ONDEN ROAD,
KANNUR (DIED) LR's IMPLEADED

ADDL.A2 AND A3 IMPLEADED AS THE LR'S OF THE DECEASED APPELLANT VIDE ORDER DATED 7/9/2007 IN IA 1455/07

ADDL.A2 MRS.SATHI DHANANJAYAN, W/O.LATE V.A.DHANANJAYAN, AGED 79 YEARS, VINEETHAM, PUTHIYAPARAMBA ROAD, ALAVIL.P.O., KANNUR

ADDL.A3 VEENA VINOD, D/O.V.A.DHANANJAYAN, VINEETHAM, PUTHIYAPARAMBA ROAD, ALAVIL.P.O., KANNUR

ADDL.A2 & A3 BY ADV. SRI.GOVIND K.BHARATHAN
PRABHIN BABU, LAKSHMI.S
SRI.K.R.BALASUBRAMANIAN
SRI.N.MADHAVAN

RESPONDENTS/RESPONDENTS/DEFENDANTS:
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1. KALLIAT CHERIYA KELAPPAN, S/O.AMBU, 77 YEARS, DHARMADAM, TELLICHERRY

2. KALLIAT KANAKENDRAN, S/O.KELAPPAN, DHARMADAM AMSOM DESOM, TELLICHERRY

3. KALLIAT SUSEENDRAN, S/O.KELAPPAN, POLICE CONSTABLE, -DO- -DO-

4. KALLIAT RAGHAVAN, S/O.AMBU, -DO- -DO-

BY ADV. SRI.V.R.VENKATAKRISHNAN (SR.)
SRI.S.ANANTHAKRISHNAN
SRI.N.C.JOSEPH

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.1458/94 IN SA 684/94

DISMISSED

17/12/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

S.A.NO.684 OF 1994

Dated 17th December 2007

J U D G M E N T

Plaintiff in O.S.44/1991 on the file of Munsiff court, Thalassery is the appellant. Defendants are respondents. Additional appellants 2 and 3 were impleaded on the death of original appellant as his legal heirs. Appellant instituted the suit seeking a decree for permanent prohibitory injunction in respect of 2 items of properties in R.S.No.45/1 of Dharmadam village having 2.91 acres. Admittedly plaint schedule property along with other properties were obtained by Velandy Achuthan under Exts.A1 and A2 registered marupats of 1922 and 1924. On the death of Achuthan his rights devolved on his widow Lakshmy and children, plaintiff and Lakshmanan. It is also admitted case that Lakshmy, the widow granted a marupattam lease in favour of first respondent and later on instituted O.S.146/1951, a suit for recovery of possession of 2 acres and 20 cents. That suit was later on dismissed as not pressed. First respondent filed O.A.5766/1975

and O.A.4546/1975 in respect of the properties covered under Exts.A1 and A2. Land Tribunal initiated suo motu proceedings in favour of appellant as S.M.P.10635/1975 and S.M.P.10636/1975 and both cases were considered by the Land Tribunal jointly. Under Ext.A7(a) order, O.A.4546/1976 was allowed and first respondent was allowed to purchase jenm right in respect of 2.20 acres of land O.A.5766/1975 in respect of remaining extent was dismissed. Similarly in suo motu, tenancy in respect of 2.20 cents raised by the appellant was rejected and for balance extent of 4.70 acres appellant was permitted to purchase jenm right. Ext.A7(a) orders were challenged before Appellate Authority (Land Reforms) in A.A.2814/1978. Appellate Authority confirmed Ext.A7(a) order and dismissed appeal under Ext.A7(b) order. It was challenged before this court under C.R.P.976/1988. This court in Ext.A7(c) order confirmed the order of the Land Tribunal. It was found that though as seen from the report of the Commissioner submitted in O.S.146/1951 as well as report of the authorised officer submitted before the Land Tribunal, first respondent has been in possession of 4.55 acres of land he can only claim tenancy in respect of 2.20 acres and though he is in possession of

more land, he is not entitled to purchase jenm right in respect of balance extent. O.S.44/1991 was thereafter filed seeking a decree for permanent prohibitory injunction and damages contending that appellant has been in possession of the plaint schedule property and respondents trespassed into the plaint schedule property on 26/12/1990 and cut and removed 6 mango trees and 6 coconut trees and they have no right to do so and appellant apprehends further trespass and therefore they are to be restrained by a permanent prohibitory injunction. Appellant is also claimed damages. Respondents resisted the suit contending that appellant is not in possession of plaint schedule property and as seen from Ext.A7(c) orders respondents are in possession of 4.53 acres of land and therefore appellant is not entitled to a decree for injunction as sought for.

2. Learned Munsiff on the evidence of Pws.1 and 2, Dws.1 to 4, Exts.A1 to A20, B1 to B3(k) and C1 to C3 dismissed suit holding that appellant did not establish possession of plaint schedule property. Appellant challenged judgment before Sub court, Thalassery in A.S.149/1993. Learned Sub Judge on re-appreciation of evidence confirmed the findings of learned Munsiff and dismissed appeal. It is challenged in second appeal.

3. Second appeal was admitted formulating following substantial questions of law.

> 1) Whether the point decided by Land Tribunal, Appellate Authority and High Court can be adjudicated again by the same party in Munsiff court and Sub court.
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> 2) Whether finding of Land Tribunal Appellant Authority and High court is not binding on Munsiff court and Sub court.
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> 3) Whether commissioner's report and written statement filed by defendants are to be taken into consideration in deciding the case.

4. Learned counsel appearing for appellant and respondents were heard.

5. Argument of learned counsel is that in the light of Ext.A7(c) order of this court finding in Ext.A7(a) order of Land Tribunal and Ext.A7(b) order of Appellate Authority (Land Reforms), respondents cannot be heard to contend that they are cultivating tenants in respect of the plaint schedule property and as Land Tribunal found that appellant is a cultivating tenant in respect of the plaint schedule property, courts below should have granted the decree sought for. It was argued that finding of this court in Ext.A7(c) is binding on

all the parties and it is to be found that appellant is entitled to decree sought for. Learned counsel appearing for respondents argued that though substantial questions of law are formulated, on the admitted facts and evidence substantial questions so formulated are not involved in the appeal. It was argued that suit is only one for injunction and the only question decided was the question of possession and based on Ext.A7(c) order of this court it can only be found that first respondent is in possession of the property, though purchase certificate was not granted in favour of first respondent for that property as long as first respondent is in possession of the property appellant is not entitled to a decree sought for. It was argued that unless appellant obtained possession of the property subsequent to Ext.A7(c) order, he is not entitled to decree for injunction sought for and question of status of first respondent is not a matter to be decided in the suit and hence substantial questions of law so formulated are not valid.

6. As provided under sub Section 5 of Section 100 of Code of Civil Procedure, even if substantial questions of law are formulated, respondents are entitled to argue that the questions so formulated are

not involved in the appeal. Being a suit for injunction the only question to be decided is the question of possession. Trial court and first appellate court considered the question of possession alone. Appellant is not entitled to get decree for injunction based on the finding of Land Tribunal in Ext.A7(a) order or that of the Appellate Authority in Ext.A7(b) order or order of this court in Ext.A7(c) in C.R.P. As rightly pointed out by learned counsel appearing for respondents, even in Ext.A7(c) order this court found that first respondent is in possession of not only the property for which first respondent was granted purchase certificate, pursuant to Ext.A7(a) order in O.A.4546/1976, the remaining extent also. This court under Ext.A7(c) order found that, that possession was not as a tenant and therefore first respondent is not entitled to purchase jenm right as provided under Section 72(B) of Kerala Land Reforms Act. But when first respondent is in possession of the property, unless appellant obtained back the possession, he is not entitled to a decree for injunction or damages alleging that respondents committed trespass. As rightly pointed out by learned counsel appearing for respondents, in view of the admitted and proved facts

substantial question of law as formulated, do not arise for consideration in the appeal, suit is one for injunction alone. As appellant did not establish his possession and it is clear that first respondent has been in possession of the property, as rightly found by first appellate court, appellant is not entitled to the decree for permanent prohibitory injunction. Appeal is dismissed. Learned counsel appearing for appellant submitted that appellant will be filing suit for recovery of possession. Appellants are at liberty to file a suit for recovery of possession on the strength of title and respondents are entitled to take all defence available under law.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.NO.684 OF 1994

17th December 2007

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